

Order

Entered: December 17, 2003

Michigan Supreme Court
Lansing, Michigan

ADM File No. 2003-64

Amendment of Rules 7.211 and
7.213 of the Michigan Court Rules

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, Rules 7.211 and 7.213 of the Michigan Court Rules are amended, effective immediately. MCR 1.201(D).

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 7.211 Motions in the Court of Appeals

(A) – (B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1) – (4) [Unchanged.]

(5) Motion to Withdraw. A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.

(a) A motion to withdraw is made by filing:

(i) – (ii) [Unchanged.]

~~(iii) — a notice of hearing under subrule (A)(5)(b);~~

~~(iv)~~ (iii) proof that copies of the motion, brief in support, ~~notice of hearing,~~ and notice that the motion may result in the conviction or trial court judgment being affirmed were served on the appellant by certified mail; and

(v) (iv) [Text of former (v) renumbered but otherwise unchanged.]

(b) – (c) [Unchanged.]

(6) – (8) [Unchanged.]

(D) – (E) [Unchanged.]

Rule 7.213 Calendar Cases

(A) Pre-Argument Conference in Calendar Cases.

(1) – (2) [Unchanged.]

(3) Any judge who participates in a pre-argument conference or becomes involved in settlement discussions under this rule may not thereafter consider any aspect of the merits of the case, except that participation in a pre-argument conference shall not preclude the judge from considering the case pursuant to MCR 7.215~~(I)~~(J).

(4) – (6) [Unchanged.]

(B) – (E) [Unchanged.]

Staff Comment: The December 17, 2003, amendments of MCR 7.211(C)(5)(a) brought the rule into conformity with the 1998 amendments of subrules (A) and (B), which eliminated the filing of a notice of hearing, instead specifying the time for a response. Subrule (C)(5)(a)(iii) and the “notice of hearing” language in subrule (C)(5)(a)(iv) were deleted, and former subrules (C)(5)(a)(iv) and (v) were redesignated subrules (C)(5)(a)(iii) and (iv), respectively. The December 17, 2003, amendment of MCR 7.213(A)(3) conformed that subrule to the May 1, 2003, amendment of MCR 7.215 by changing the cross-reference from former subrule (I) to subrule (J).

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 17, 2003

Corbin R. Davis

Clerk